

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 22, 2005

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| IN RE: |) | |
| |) | DOCKET NO. |
| PETITION OF ATMOS ENERGY |) | 03-00540 |
| CORPORATION FOR APPROVAL OF |) | |
| GAS TRANSPORTATION AGREEMENT |) | |
| WITH GOODYEAR TIRE AND RUBBER |) | |
| COMPANY |) | |

DISSENT OF DIRECTOR RON JONES

(PUBLIC VERSION)

The above-styled docket came before a panel of the Tennessee Regulatory Authority for deliberations on August 30, 2004. During the deliberations, Chairman Pat Miller and Director Deborah Taylor Tate voted to grant the *Amended Petition of Atmos Energy Corporation for Approval of Gas Transportation Agreement with the Goodyear Tire and Rubber Company* filed by Atmos Energy Corporation on August 6, 2004. The majority filed an order memorializing this decision on August 22, 2005. For the reasons stated herein, I respectfully dissent from the decision of the majority.

RELEVANT PROCEDURAL HISTORY

Atmos Energy Corporation ("Atmos") filed a petition on September 30, 2003 requesting approval of a gas transportation agreement between it and Goodyear Tire and Rubber Company ("Goodyear"). In the petition, Atmos alleged that, because of cost

containment opportunities available to Goodyear, Goodyear notified Atmos of Goodyear's intention to bypass Atmos's system. In response to the notification, alleged Atmos, it performed its own analysis, reviewed information provided by Goodyear, and determined that "the proposed bypass was both an economically feasible and operationally viable option."¹ Thereafter, the companies began negotiations of an agreement in an attempt to retain Goodyear as an Atmos customer. It is this agreement that is the subject of the September 30th petition. The petition also asserts that Atmos is not seeking any margin loss recovery for the reduced rates in the agreement.² In support of the petition, Atmos attached the agreement and a cost analysis and feasibility analysis provided by Goodyear to Atmos.

Subsequent to the filing of the petition, advisory staff issued data requests, the company provided responses, TRA staff sought to intervene as a party, a contested case was convened, TRA staff was permitted to intervene, TRA staff as a party procured the services of a consultant, a protective order was entered, and a procedural schedule established. Negotiations between the parties ultimately ended with Atmos filing an amended petition on August 6, 2004. In the amended petition, Atmos incorporated the allegations in its September 30th petition; alleged that the parties had agreed to amendments related to price, adjustments for unaccounted gas, term of the agreement, and assignability; and requested approval of the amended agreement.³ No additional information was provided.

¹ See *Petition of Atmos Energy Corporation for Approval of Gas Transportation Agreement with the Goodyear Tire and Rubber Company*, pp 2-3 (Sept 30, 2003).

² See *id*

³ See *Amended Petition of Atmos Energy Corporation for Approval of Gas Transportation Agreement with the Goodyear Tire and Rubber Company*, pp 1-2 (Aug 6, 2004)

FINDINGS AND CONCLUSIONS

When reviewing bypass agreements in the past the Authority has considered:

1. whether the threat of bypass is imminent;⁴
2. whether the bypass would be uneconomic;⁵
3. whether rates and terms are unduly preferential or discriminatory;⁶
4. whether the rates are the highest that could be negotiated;⁷
5. the effect of margin loss on the company's rate of return;⁸
6. whether the agreement will allow the customer to remain competitive and contribute to the prosperity of the area;⁹
7. the effect on the utility's transportation revenues and profit margin;¹⁰ and
8. the need for capital investment to meet the requirements of the agreement.¹¹

Of these factors, it is my opinion that the most critical consideration is the imminence of the threat of bypass. With limited exceptions, the consideration of imminence drives the determination of whether there is any need to consider the remaining factors.¹² After

⁴ See *In re Petition of United Cities Gas Company for Approval of a Transportation Gas Service Agreement with Mountain Home Energy Center, L L C*, Docket No. 01-00138, *Order Approving Transportation Gas Service Agreement*, p 3 (July 20, 2001) [hereinafter *Mountain Home Order*]; *In re Petition of Chattanooga Gas Company for Approval of Large Customer Contract Under Experimental Rule with Velsicol Chemical Corp*, Docket No. 97-00265, *Order Disapproving Special Contract Under the Large Customer Contracts Tariff*, p 5 (Mar. 17, 1998) [hereinafter *Velsicol Order*].

⁵ See *Mountain Home Order*, *supra* note 4, at 3, *Velsicol Order*, *supra* note 4, at 5

⁶ See *Mountain Home Order*, *supra* note 4, at 3; *Velsicol Order*, *supra* note 4, at 5

⁷ See *Mountain Home Order*, *supra* note 4, at 3; *Velsicol Order*, *supra* note 4, at 5

⁸ See *In re Petition of United Cities Gas Company for Approval of a Transportation Gas Service Agreement with Superior Industries International*, Docket No. 00-01022, *Order Accepting Settlement Agreement and Approving Transportation Gas Service Agreement*, p 5 (June 25, 2002), *Mountain Home Order*, *supra* note 4, at 2-3; *In re Petition in United Cities Gas Company, a Division of Atmos Energy Corporation, for Approval of a Gas Transportation Agreement with Middle Tennessee State University*, Docket No. 98-00277, *Order Approving Gas Transportation Agreement*, p 2 (Mar. 12, 1999) [hereinafter *MTSU Order*].

⁹ See *In re Petition of United Cities Gas Company for Approval of a Transportation Gas Service Agreement with Superior Industries International*, Docket No. 00-01022, *Order Accepting Settlement Agreement and Approving Transportation Gas Service Agreement*, p 5 (June 25, 2002)

¹⁰ See *Mountain Home Order*, *supra* note 4, at 2, *MTSU Order*, *supra* note 8, at 2

¹¹ See *Mountain Home Order*, *supra* note 4, at 3

¹² Docket No. 98-00277 is an example of such an exception. In that case, the order does not discuss the imminence of bypass. Instead, the Directors relied on the fact that the discounted service would add incremental load thereby increasing profit margin. *MTSU Order*, *supra* note 8, at 2. Increased profit margin is not expected in this case.

reviewing the record of this proceeding, I find that this record does not contain sufficient information to determine whether the threat of bypass or, in this case, shifting production or switching to oil is imminent. Therefore, I must conclude that absent the production of further information or explanation, the amended agreement should not be approved.

As to bypass, the engineering report, submitted as part of the feasibility study supporting the threat of bypass and containing construction and maintenance cost estimates and estimated times for project design, permitting, material acquisition, and construction, was [REDACTED] years old when Atmos filed its September 30th petition and has not been updated.¹³ The only other cost estimate in the record, although more current, does not contain sufficient specificity and describes the information contained therein as being useful for [REDACTED].¹⁴ As such, that estimate is inadequate as a tool to evaluate whether bypass is imminent.

The engineering report also lists certain permitting and rights of way requirements, including the need to obtain right-of-way agreements from between [REDACTED] [REDACTED] landowners, depending on the route of the bypass.¹⁵ There is no evidence in the record that Goodyear has taken any steps to obtain the necessary permits or even to determine the likelihood of successfully obtaining the necessary permits.¹⁶ Likewise, with one exception,

¹³ *Petition of Atmos Energy Corporation for Approval of Gas Transportation Agreement with the Goodyear Tire and Rubber Company*, attachments, pp 5-15 (Sept. 30, 2003) (filed pursuant to the Protective Order)

¹⁴ Responses to Data Requests, attachment p 13 (Oct 22, 2003) (filed pursuant to the Protective Order)

¹⁵ *Petition of Atmos Energy Corporation for Approval of Gas Transportation Agreement with the Goodyear Tire and Rubber Company*, attachments, p 10 (Sept 30, 2003) (filed pursuant to the Protective Order).

¹⁶ See *Velsicol Order*, *supra* note 4, at 7-8 (finding that the customers "made no attempt to demonstrate the likelihood of success of an application before the FERC, and made no actual filing before the FERC . . . and failed to demonstrate, whether a group application by the four companies would have any chance for approval by the FERC")

there is no evidence that Goodyear has attempted in the last three (3) plus years to contact the landowners from whom it must obtain right-of-way agreements.

Also, based on the numbers provided by Goodyear in the cost and feasibility analysis, entering into the amended agreement falls financially short of what would be realized if Goodyear pursued a bypass opportunity. According to my calculations, if Goodyear were to bypass rather than transport gas pursuant to the amended agreement, it would save approximately \$300,000¹⁷ at the end of ten years. After that time elapsed, Goodyear would pay only on-going maintenance costs of [REDACTED] per MMBtu,¹⁸ a rate that may be difficult for Atmos to beat or, at the most, that would provide minimal ratepayer benefit. Given this reality, I am perplexed as to why, if the threat of bypass is imminent, Goodyear would enter into an agreement that is more costly than bypass. Consequently, without a specific answer in the record, I must conclude that for some reason the threat of bypass is not imminent.

As to the remaining costs containment options, namely shifting production or switching to #6 fuel oil, there is little if any information in the record. As to shifting production, there is no information, such as the production capacity of the other plants or the cost of shifting production, supporting the feasibility of this option. In addition, Atmos failed to provide any information to two data requests issued by advisory staff seeking information

¹⁷ Calculated as follows: [REDACTED]

[REDACTED] See *Petition of Atmos Energy Corporation for Approval of Gas Transportation Agreement with the Goodyear Tire and Rubber Company*, attachments, p. 3 (Sept. 30, 2003) (filed pursuant to the Protective Order); *Amended Petition of Atmos Energy Corporation for Approval of Gas Transportation Agreement with the Goodyear Tire and Rubber Company*, Exhibit A, p. 1 (Aug. 6, 2004) (filed pursuant to the Protective Order).

¹⁸ *Petition of Atmos Energy Corporation for Approval of Gas Transportation Agreement with the Goodyear Tire and Rubber Company*, attachments, p. 3 (Sept. 30, 2003) (filed pursuant to the Protective Order)

relevant to a review of this cost containment option.¹⁹ Similarly, there is little information in the record in regard to switching to #6 fuel oil. In response to a data request, Atmos produced a spreadsheet the title of which suggests that the figures contain a comparison of negotiated and #6 fuel oil rates. Despite this suggestion, there does not appear to be any fuel oil data in the spreadsheet.²⁰


Having determined that there is insufficient evidence to determine whether bypass is imminent, I need go no further. Nevertheless, I think it important to note that Atmos's allegation that it is not seeking margin loss recovery for the agreement is a concession without any effect as to Atmos. In Atmos's past rate cases, a rate design was adopted that ensured that Atmos would recover its entire revenue requirement from customers other than Goodyear. Using a Sales Adjustment Mechanism ("SAM"), the rates of customers other than Goodyear are adjusted after the fact to reflect Goodyear's contribution.²¹ In effect, customers other than Goodyear prepay Goodyear's contribution to Atmos's revenue requirement. The construct of a SAM that requires customer prepayment and subsequent reimbursement by Goodyear directly to customers masks the fact that there actually is one hundred percent (100%) margin loss recovery. In reality, reduced credits to customers through the SAM resulting from a reduction in rates to Goodyear is, in my opinion, a margin loss contribution issue just as it would be in the absence of a SAM.

¹⁹ See Responses to Data Requests, attachments, pp 3-4, request nos. 5 & 6 (Nov. 5, 2003) (filed pursuant to the Protective Order)

²⁰ See Responses to Data Requests, attachments, p. 14 (Oct. 22, 2003) (filed pursuant to the Protective Order).

²¹ See *In re Petition of United Cities Gas Company to Place Into Effect a Revised Natural Gas Tariff*, Docket No U-84-7333, *Order*, pp. 15-16 (Jun 10, 1985) (finding that a the "Company agreed that it would not lose any money under a SAM"); *In re Petition of United Cities Gas to Place into Effect Revised Tariff Sheets*, Docket No 95-02258, *Order* p 9 (Nov 20, 1995) (continuing the application of the SAM)

Based on these findings, it is my conclusion that this docket should be deferred to allow the parties to respond to my findings and to provide support where necessary. In addition, Atmos should provide data detailing the per customer effect of losing Goodyear as a customer. Because the majority's decision to grant the amended petition is in opposition to both my findings and conclusion, I cannot join in that decision.



Ron Jones, Director